Transfer of Development Rights
TDR

Massachusetts Smart Growth

Massachusetts Executive Office of Environmental Affairs

Development patterns based on conventional zoning create less than optimal conditions

Underdeveloped Commercial Centers

Overdeveloped Residential Sprawl

Transfer of Developments Rights
Two-Fold Objective

Concentrate Development in Growth

Preserve Existing Open Space

TDR Definitions

Development Rights

The amount of development that could take place on a tract of land under Zoning Bylaw provisions.

Sending Areas

Areas identified as priorities for preservation or significant decreases in development potential.

TDR Definitions (continued)

Receiving Area

Areas that have potential to support more development than what is allowed by existing bylaws and/or regulations.

TDR Credit Bank

A third party entity that can store and administer the sale of development rights.

Transfer of Developments Rights
The Concept

Owner of "sending" parcel sells development rights in exchange for permanent conservation easement.

growth area

preservation area

Owner of "receiving" parcel buys development rights to build at densities higher than allowed under base zoning.

Potential Sending Areas

- Prime Agricultural Lands
- Large Tracts of Unprotected Open Space
- Aquifer Protection Overlays
- Areas of Critical Environmental Concern
- Habitat for Rare and Endangered Species
- Watersheds to Sensitive Surface Waters
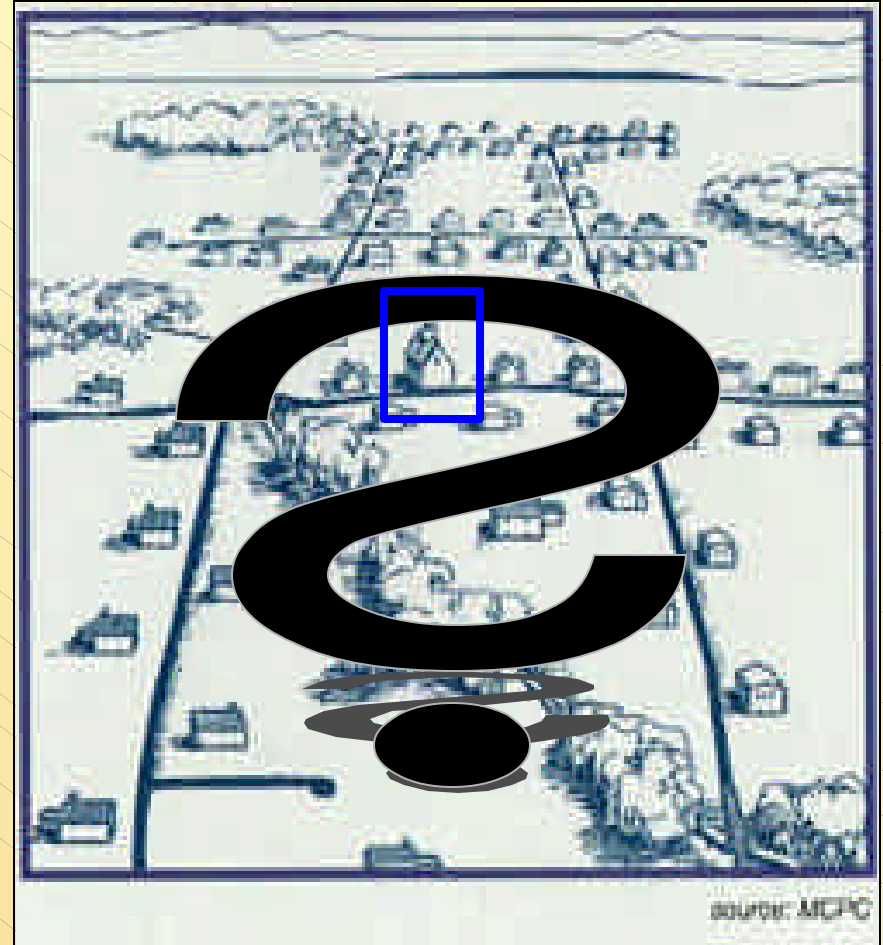- Historic Districts or Structures

Potential Receiving Areas

- Village Centers
- Transportation Nodes
- Commercial or Industrial Districts
- Areas Served by Infrastructure
  - Centralized Water Supply
  - Centralized Sewer System
  - Public Transportation Routes

TDR: Alternative Futures
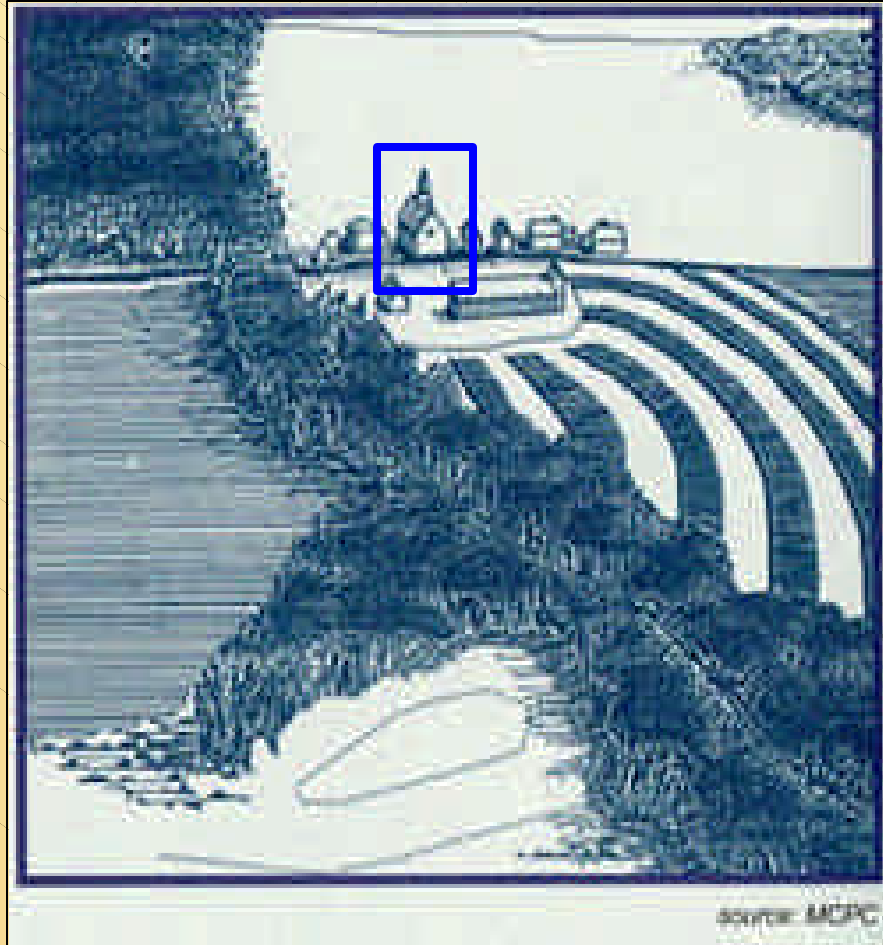
The present

The future with conventional zoning
The future with TDR zoning

Transfer of Development Rights

- In 1981 only 12 jurisdictions had TDR programs

- By 2000 over 50 jurisdictions had TDR programs

- Montgomery County Maryland has protected 40,583 acres with TDRs

- New Jersey Pinelands has protected 19,238 acres with TDRs

- Groton Massachusetts has protected 292 acres with TDRs

Implementing TDR
The Basic Questions

- **Clearly Defined Sending and Receiving Areas**
  - "What are the resources we need to protect?"
  - "Where can we handle increases in development capacity?"

- **Adequate Administrative Capacity**
  - "Do we have a permitting body that clearly understands the program?"
  - "Do we need a TDR Credit Bank?"
  - "Will the City/Town/County play a role in establishing the value of development rights or will the market be used to establish value?"

Implementing TDR Disincentives in the Sending Area

Reduce development potential in Sending Areas through increased minimum lot size.

> **Example:**
> **Sending Area Overlay**
> **Original Minimum Lot Size = 1 acre**
>
> **Revised Minimum Lot Size = 10 acres**

NOTE: ALLOW TDR AT ORIGINAL DENSITY TO PROVIDE INCENTIVE AND PROTECT LAND OWNER'S INVESTMENT

Implementing TDR Disincentives in the Sending Area

Increase Permit Scrutiny in Sensitive Areas

Example:
Sending Area Overlay

"Subdivisions of five or more lots in a designated Sending Area shall require an Environmental Impact Report as described in the Planning Board Rules and Regulations"

THE LEVEL OF EFFORT REQUIRED TO DEVELOP THE PROPERTY IN THE SENDING AREA BECOMES CONSISTENT WITH PERFORMING A TDR

Implementing TDR Incentives in the Receiving Area

Density Bonuses generally provide a fixed percentage increase of development rights over and above the Sending Area yield

Example:
"The number of Development Rights that can be transferred from the Preservation District shall be 1.5 times the amount of Development Rights determined from a Yield Plan "

CAUTION: DENSITY BONUSES CAN MORE THAN DOUBLE THE DEVELOPMENT POTENTIAL OF THE RECEIVING DISTRICT

Implementing TDR
TDR Credit Bank

TDR Credit Banks can provide a holding place for development rights that are purchased before they can be transferred.

Issue:
Banks should be established as an independent third party (non-profit corporation, enterprise fund, etc.) to ensure that development rights are readily available when Receiving Area opportunities arise.

PURPOSE: ALLOWS GREATER FLEXIBILITY RELATIVE TO THE TIMING OF A MULTI-LAYERED, COMPLEX TRANSACTION

Average Annual Precipitation

Massachusetts

Case Study: Town of Plymouth, Massachusetts

Plymouth

Copyright 2000 by Spatial Climate Analysis Service, Oregon State University

Legend (in inches)

■	Under 38	■	48 to 50
■	38 to 40	■	50 to 52
■	40 to 42	■	52 to 54
■	42 to 44	■	54 to 56
■	44 to 46	■	Above 56
■	46 to 48		

This is a map of annual precipitation averaged over the period 1961-1990. Station observations were collected from the NOAA Cooperative and USDA-NRCS SnoTel networks, plus other state and local networks. The PRISM modeling system was used to create the gridded estimates from which this map was made. The size of each grid pixel is approximately 4x4 km. Support was provided by the NRCS Water and Climate Center.
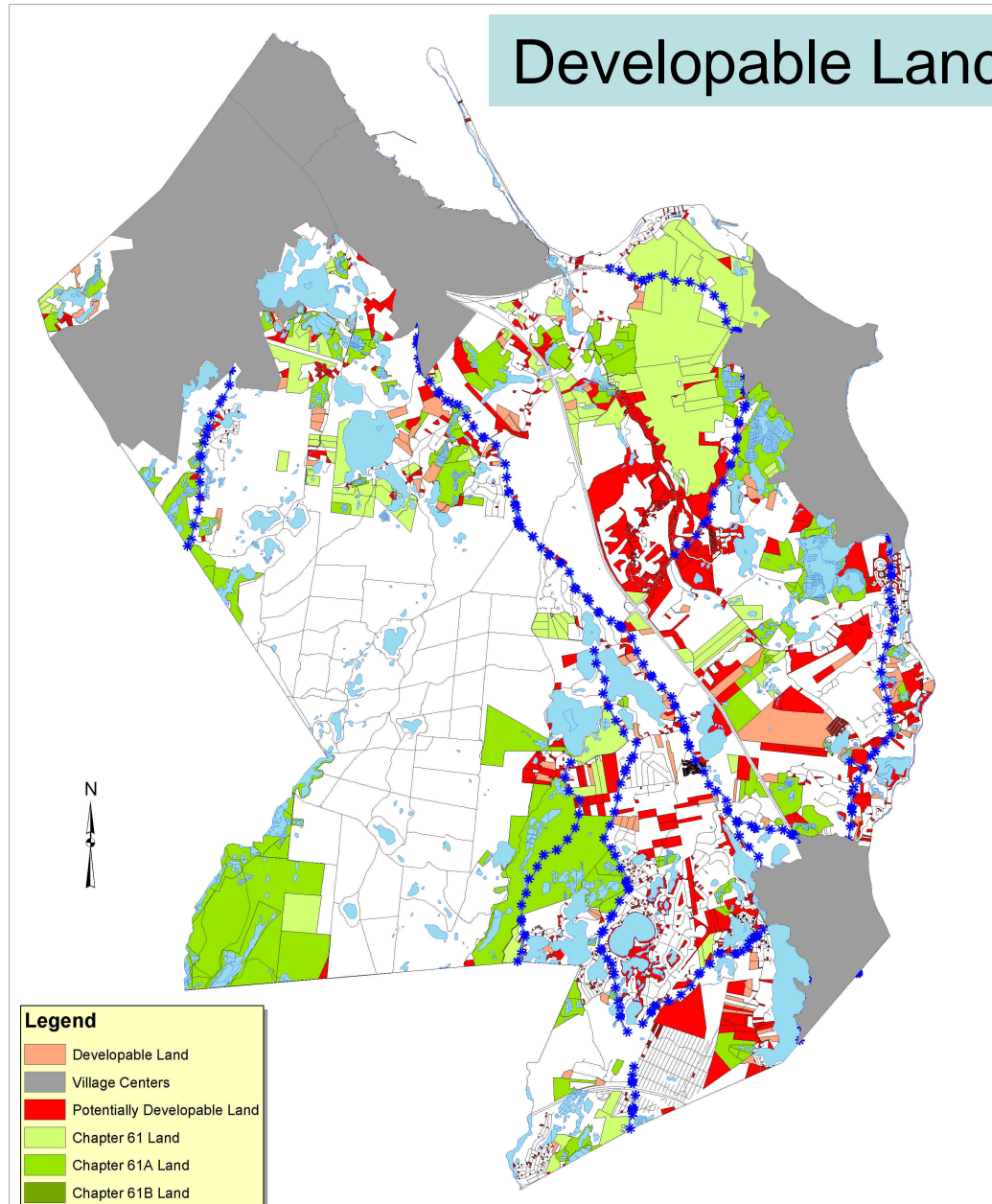
Outline of Plymouth

103 sq. miles

Transfer of Development Rights

Why Plymouth?

- Majority of development is occurring the the Rural areas of Plymouth

- Provide an alternative to developing in environmentally sensitive areas and areas with limited town services

- Without change Plymouth will be forced to provide services to development where ever it occurs.

Developable Land

25,000 Acres of Developable Land

Legend
- Developable Land
- Village Centers
- Potentially Developable Land
- Chapter 61 Land
- Chapter 61A Land
- Chapter 61B Land

Developable Residential Land

Department of Planning and Development

Transfer of Development Rights

- It is not possible for Plymouth to purchase and protect all remaining undeveloped land

- The potential for some level of development exists on most land in Plymouth

- TDR is a voluntary program

Transfer of Development Rights

- Plymouth has adopted a conservative approach to TDRs

- The process includes a review of successes and refinement of the Town's bylaw

- The Rural Residential TDR Bylaw approved by Town Meeting in 2002

- Over the next few years the bylaw will be improved and expanded

Transfer of Development Rights

- Consolidates existing language into a single section

- Allows a two phase process

    Certificates are issued

    Receiving areas are approved

- Allows development rights "Banking"

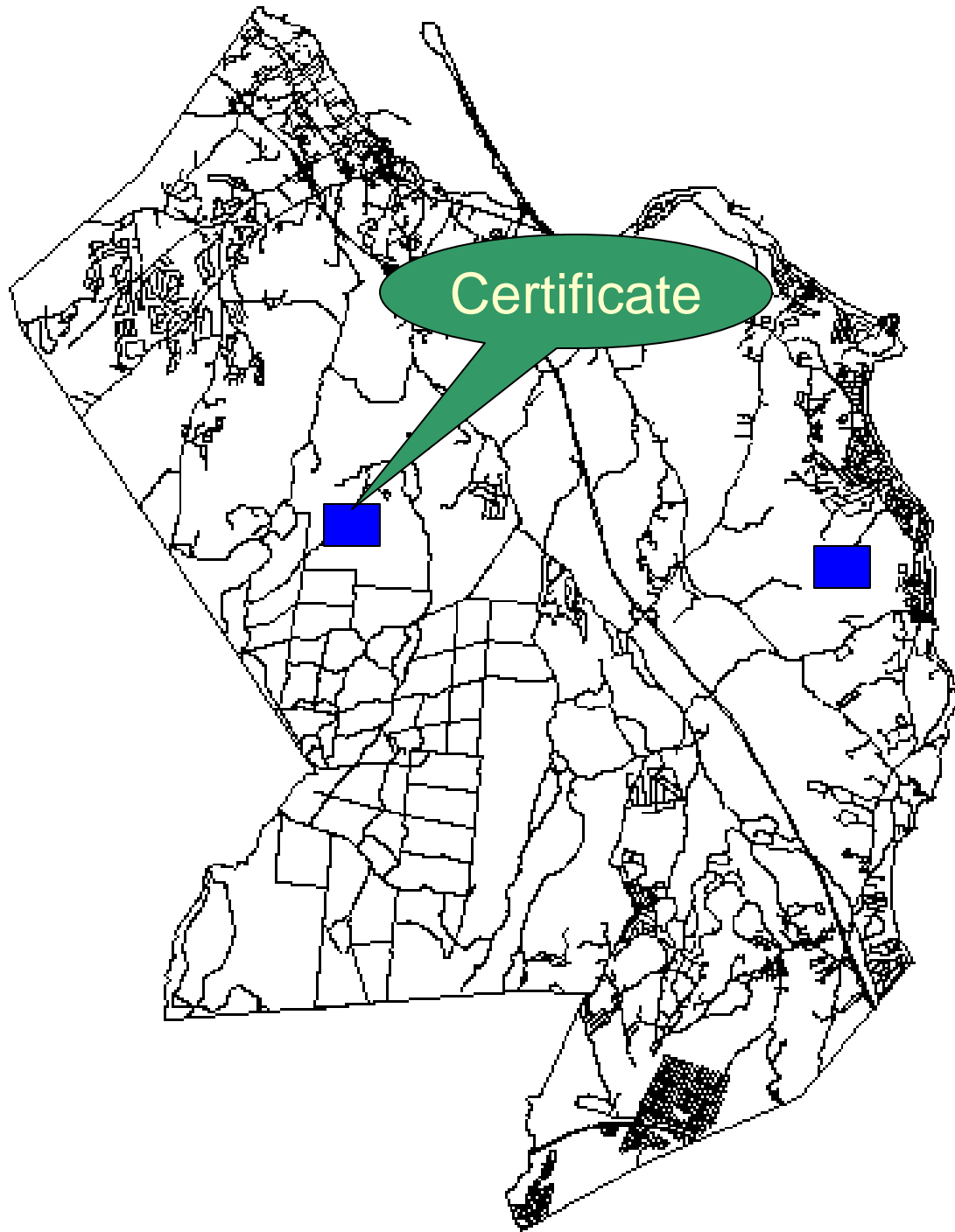- Allows denser development in new subdivisions

Transfer of Development Rights

- The 50% cap in existing developments remains

- Creates a site plan review process for large (500+ acre with 500' frontage on a Major Street) receiving area

- All other areas or densities greater than 1 unit per acre requires a special permit
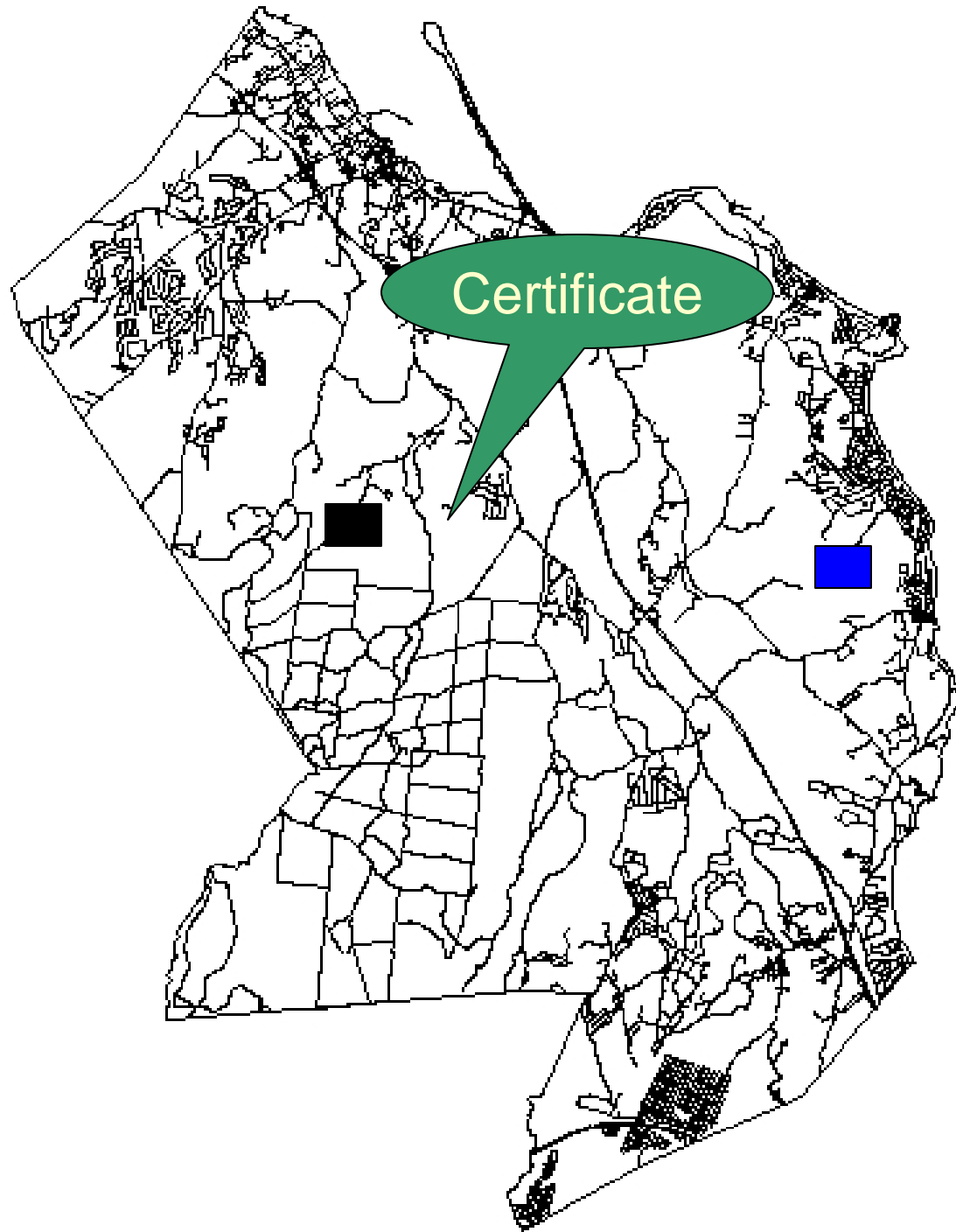
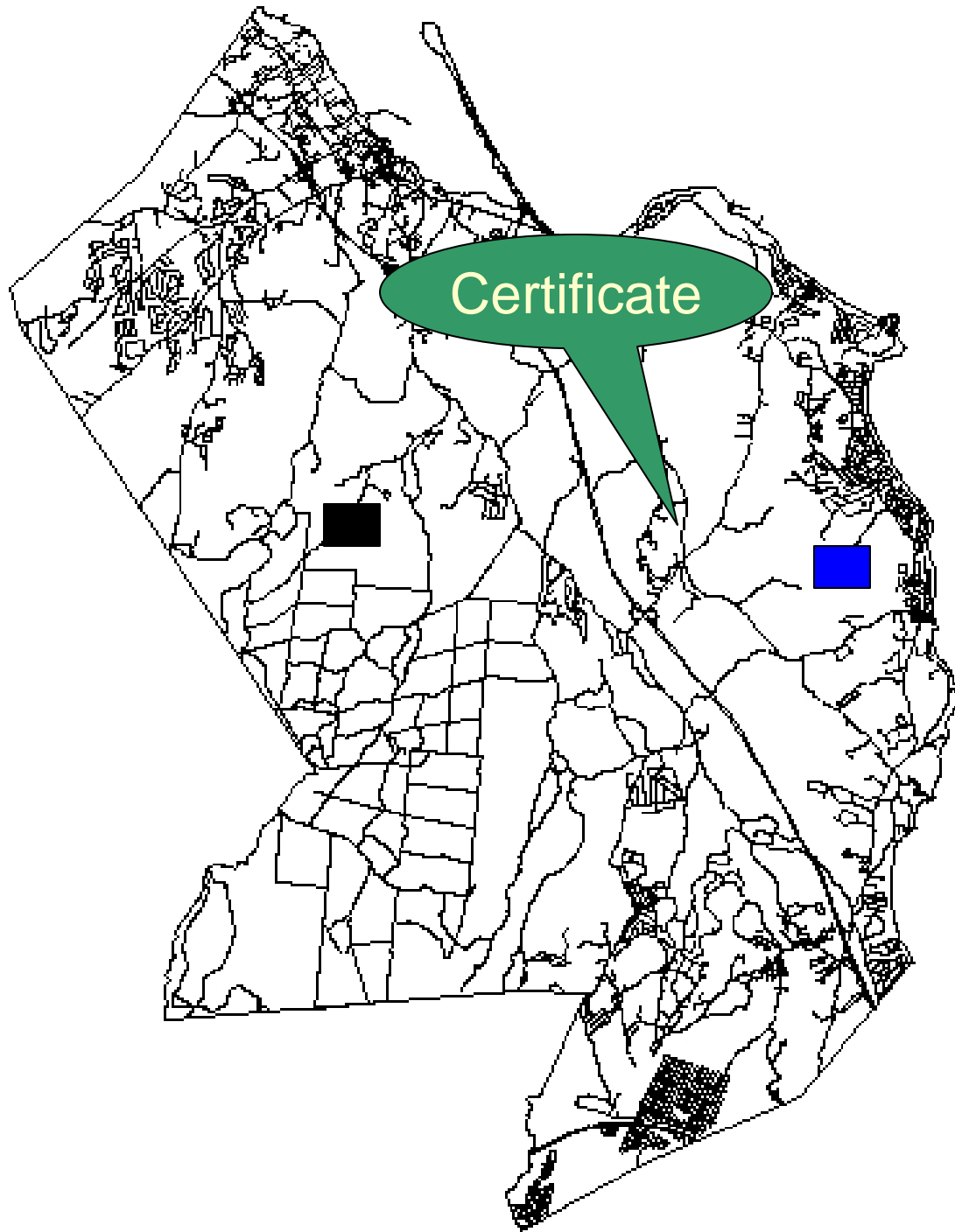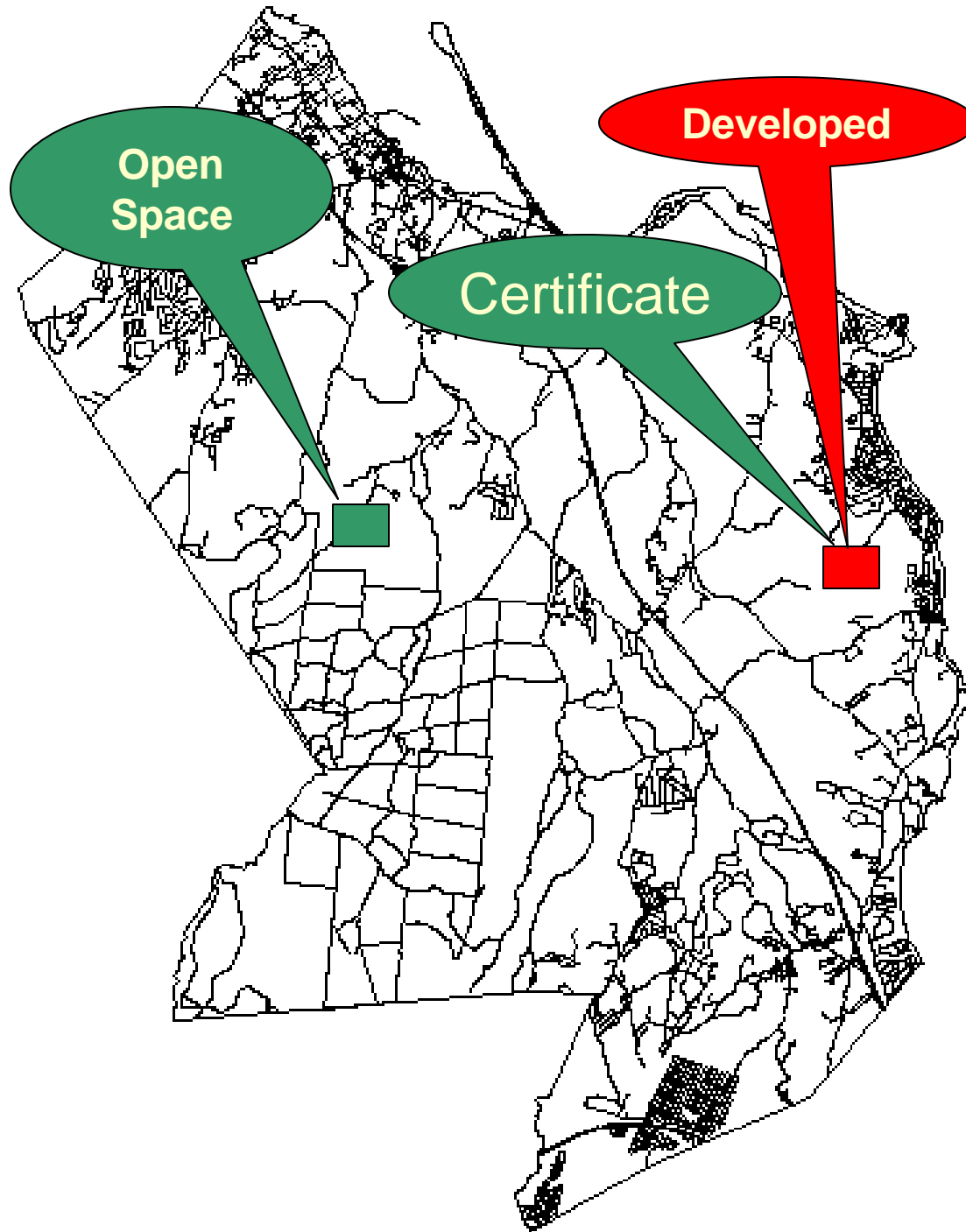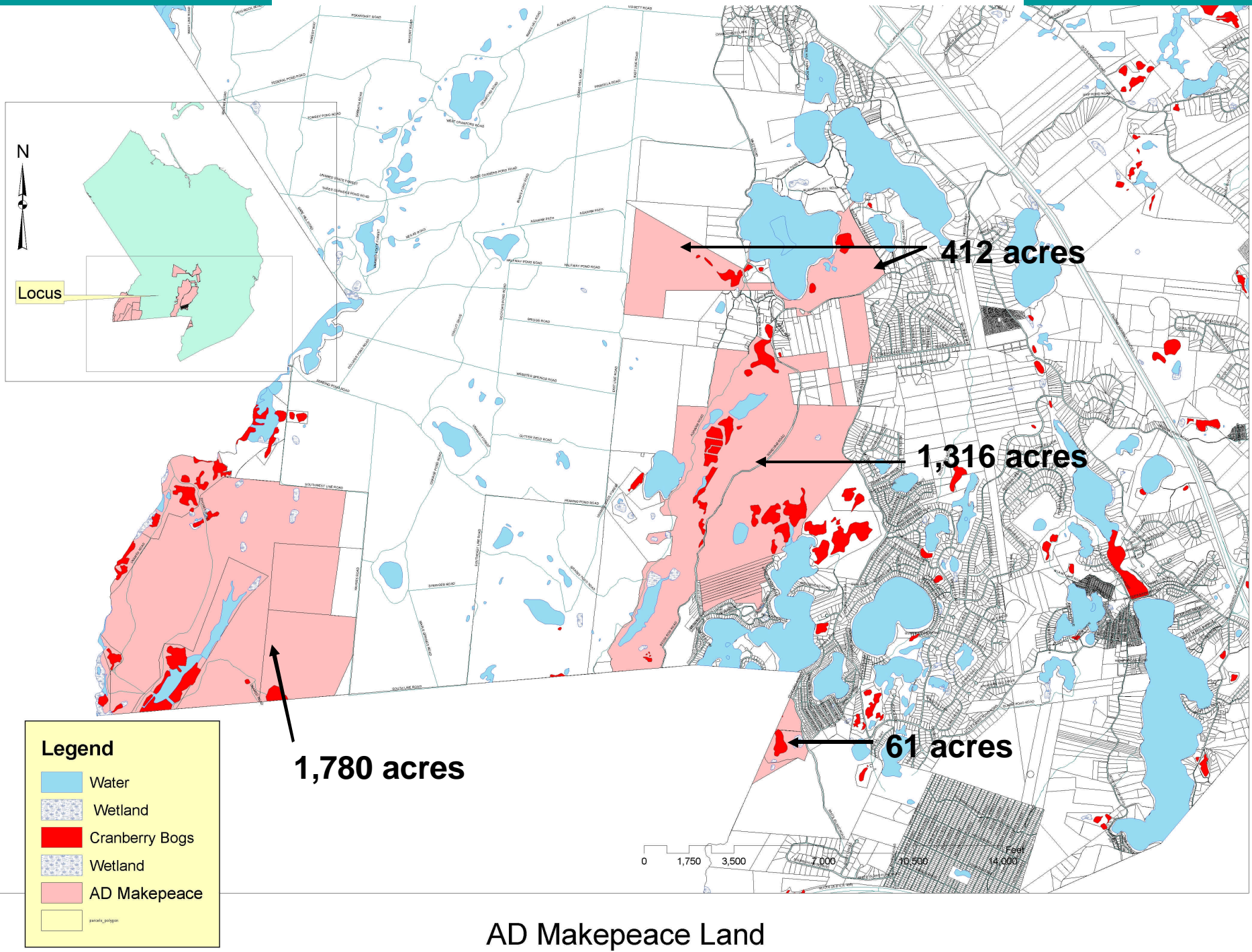- Bases unit count on land value
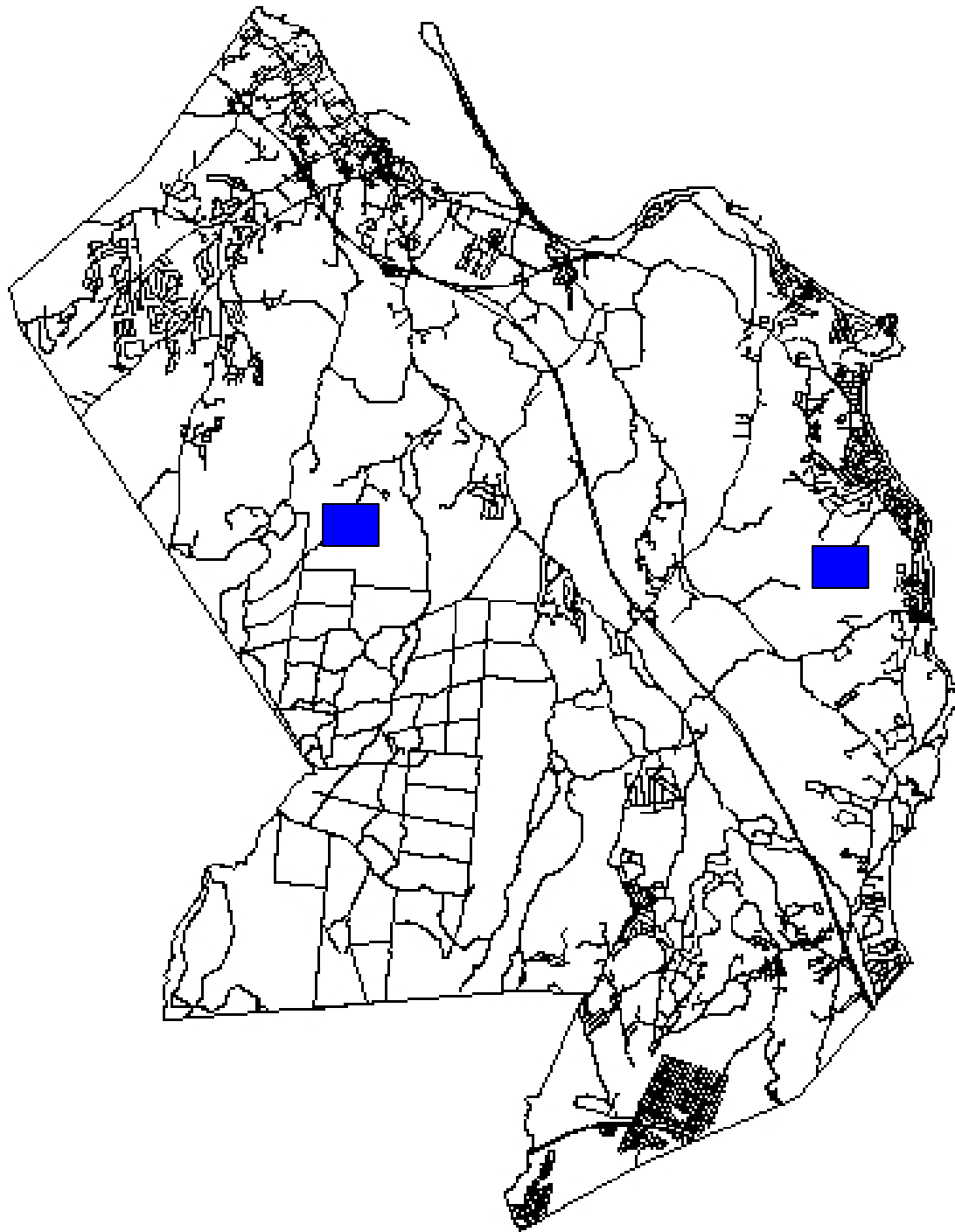
The Concept

The Concept

Certificate

The Concept

Certificate

AD Makepeace Land

Transfer of Development Rights

TDR's Potential

The Trails

- 51 house lots

- 102 acres of open space

  - 45.6 acres horse farm

  - 56.4 acres on-site

Transfer of Development Rights

TDR's Potential

Clark Estates

- 96 house lots

- 20.6 acres of open space

  - 8.5 acres on-site

  - 12.1 acres off-site

- 7 additional lots

- 1 bonus lot deeded to the homeowners association

Transfer of Development Rights

Keys to success

- Take small steps – don't try to do everything at once

- Introduce the concept in the least controversial way

  - Bonus densities?

  - Designate specific agreed upon receiving area

  - Limit number of units any area can receive

Transfer of Development Rights

Keys to success

- Keep it simple – Trust the Special Permit (Special Exception) Process

- Provide certainty for developers

  - Allowed densities

  - Develop a track record

- Combine with Open Space Bylaws

- Provide exemptions (building caps)

Transfer of Development Rights

Keys to success

- Work with the development community

  – Don't create the perfect **Town/County** ordinance

  – Create a ordinance that makes economic sense for the developer

  – Focus on something both sides can live with

USEFUL LINKS:

http://commpres.env.state.ma.us/content/tdr.asp

EOEA's summary of TDR as part of their Community Preservation Tolls & Techniques program. Includes a link to the EOEA/DHCD report "*Excerpts from A Study of the Feasibility of Establishing Transferable Development Rights under the Rivers Protection Act.*"

http://www.asu.edu/caed/proceedings99/PRUETZ/PRUETZ.HTM

Additional TDR case studies compiled by Rick Pruetz, FAICP. Pruetz is the author of "*Beyond Takings and Givings, Saving Natural Areas, Farmland, and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges* (Arje Press, 2003)."

http://www.asu.edu/caed/proceedings02/PRUETZ/pruetz.htm
More recent material from Rick Pruetz charting the progress of TDR in various parts of the country.

http://www.lincolninst.edu/pubs/pub-detail.asp?id=424
Article from the Lincoln Institute of Land Policy providing conceptual overview as well as some details regarding TDR case law.

USEFUL LINKS:

http://www.sustainable.doe.gov/landuse/transfer.shtml

Smart Communities Network TDR page that provides an overview with several other TDR web links.

http://www.plannersweb.com/tdr.html

Overview of TDR from Planners Web with links to the most famous TDR case studies including Montgomery County, MD; King County, WA; and the New Jersey Pinelands.

http://www.realtor.org/libweb.nsf/pages/fg804

National Association of Realtors "Field Guide to Transfer of Development Rights."